

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
CARLOS PEREZ ALVARADO,  
  
Defendant.

Case Nos. 16-cr-00940-BAS  
16-cr-02770-BAS  
17-cr-07017-BAS

**ORDER GRANTING DEFENDANT’S  
MOTION FOR COMPASSIONATE  
RELEASE**

Defendant Carlos Perez Alvarado, a 68-year-old career offender, who has served fifty-two months of his ninety-two month sentence, seeks compassionate release because he has terminal stage IV metastatic colon cancer that has spread to his liver and lungs.<sup>1</sup> His chemotherapy, type-2 diabetes and hypertension also place him at greater risk of

<sup>1</sup> Defendant’s Motion has been filed in all three of his criminal matters, which were resolved by a global settlement. For simplicity, the Court references the filings in Case No. 16-cr-2770, which concerned Defendant’s most serious offense. The Court has included the corresponding ECF Nos. for his other two cases below:

<b>Document</b>	<b>16-cr-02770-BAS</b>	<b>16-cr-00940-BAS</b>	<b>17-cr-07017-BAS</b>
Motion for Release	ECF No. 45	ECF No. 51	ECF No. 25
Government’s Response	ECF No. 54	ECF No. 58	ECF No. 34
Defendant’s Reply	ECF No. 58	ECF No. 62	ECF No. 38
Information	ECF No. 1-3	ECF No. 9	ECF No. 13-1
Plea Agreement	ECF No. 7	ECF No. 27	N/A
Presentence Report (“PSR”)	ECF No. 10	ECF No. 31	N/A
Sentencing Tr.	ECF No. 27	ECF No. 43	ECF No. 17
Judgment / Revocation	ECF No. 16	ECF No. 36	ECF No. 11

1 complications if he contracts COVID-19. The Government opposes (“Government’s  
2 Response”), and Defendant replies (“Defendant’s Reply”). *See supra* note 1. For the  
3 reasons stated below, the Court **GRANTS** Defendant’s Motion.

#### 4 **I. BACKGROUND**

5 In approximately 2010, the U.S. Immigration and Customs Enforcement Agency  
6 (“ICE”) initiated a wiretap investigation, which included the interception of Defendant’s  
7 telephone. (PSR ¶ 7.) Intercepting his phone led to multiple cocaine seizures, large  
8 amounts of cash and eventually 51 grams of heroin. Although defendant was indicted in  
9 the drug case (No. 16-cr-2770-BAS), he remained in Mexico, until he was arrested in San  
10 Diego for entering the United States illegally after deportation in violation of Title 8 U.S.C.  
11 § 1326(a) and (b) (No. 16-cr-940-BAS).

12 Defendant qualified as a career offender as defined in U.S. Sentencing Guidelines §  
13 4B1.1(a). Over the past forty-five years, Defendant has had numerous convictions,  
14 including, among others, three drug felonies (PSR ¶¶ 42, 44, 46) and assault with a deadly  
15 weapon. (PSR ¶ 43.) Defendant has never possessed immigration documents allowing  
16 him to enter or be in the United States legally, and he has two prior convictions for entering  
17 the United States after deportation. (PSR ¶¶ 45, 47.) Defendant has been deported from  
18 the United States on at least four occasions. (PSR ¶¶ 57–58.) The pending offenses were  
19 also a violation of his supervised release in one of his immigration cases.

20 Mr. Perez Alvarado’s attorney negotiated a global settlement for his client, which  
21 included a plea in No. 16-cr-940-BAS to entering the United States illegally after  
22 deportation; a plea in No. 14-cr-555-FMO, the Los Angeles drug conspiracy, which was  
23 transferred from the Central District of California to the Southern District of California as  
24 No. 16-cr-2770-BAS; and an admission to the supervised release violation in No. 11-cr-  
25 6645 GAF, transferred to the Southern District of California as No. 17-cr-7017-BAS. The  
26 Government agreed to recommend that any sentences on these three cases run concurrently.

27 Although Defendant faced a guideline sentence of 188–235 months, the Court  
28 agreed to follow the Government’s recommendation for a downward variance based on

1 Defendant's age and his medical condition. (Sentencing Tr., at 5:17–6:23.) The Probation  
2 Officer had noted that Defendant "suffers from diabetes, high cholesterol and high blood  
3 pressure." (PSR ¶ 73.) Thus, the Court varied downward from the low end of 188 months  
4 and sentenced Defendant to 92 months for the drug conspiracy, 41 months for the  
5 immigration felony and 12 months for the supervised release violation. The Court agreed  
6 to run all three sentences concurrently. *See* Judgment/Revocation; *supra* note 1.

7 Mr. Perez Alvarado has now served 52 months of that 92-month sentence.  
8 According to the Government, Defendant's projected release date is in two years on  
9 October 17, 2022. (Government's Response, at 5.)

10 Since his sentencing, Defendant has been diagnosed with stage IV colon cancer,  
11 which has metastasized to his liver, lungs and lymph nodes. (Defendant's Motion, Exhs.  
12 B, K.) This is "likely to be a terminal diagnosis." (*See* Decl. of Dr. Adl-Tabatabai,  
13 Defendant's Motion, Exh. A ¶ 8.) Since his diagnosis, Defendant has been transferred to  
14 the Federal Medical Center at Butner in North Carolina where he has been receiving  
15 chemotherapy treatments, underwent a colostomy and requires chronic care. (Defendant's  
16 Motion, Exhs. B, K.)

17 Also since his sentencing, the country in general, and the prison system specifically,  
18 has been hit with the COVID-19 pandemic. According to the Bureau of Prisons ("BOP")  
19 website, FMC Butner has had 13 inmates and 22 staff who have tested positive for COVID-  
20 19, with 11 of the inmates and 18 of the staff recovered. *See* BOP, Covid-19 Cases,  
21 <http://www.bop.gov/coronavirus> (last visited August 28, 2020). The neighboring, sister  
22 facility, FCI Butner, has had 197 inmates and 33 staff test positive, with 194 inmates and  
23 31 staff listed as recovered. *Id.*

24 On June 29, 2020, Defendant submitted a request for compassionate release to the  
25 warden where he is being housed. (Defendant's Motion, Exh. G.) The warden has not yet  
26 responded to this request.

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## 1 II. ANALYSIS

2 A district court generally “may not modify a term of imprisonment once it has been  
3 imposed.” 18 U.S.C. § 3582(c); *see also* *Dillon v. United States*, 560 U.S. 817, 825–26  
4 (2010). A narrow exception, compassionate release, allows a court to reduce a sentence  
5 for “extraordinary and compelling reasons.” 18 U.S.C. § 3582(c)(1)(A)(i). However, a  
6 court may only consider a defendant’s motion for compassionate release “after the  
7 defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to  
8 bring a motion on the defendant’s behalf” or “the lapse of 30 days from the receipt of such  
9 a request by the warden of the defendant’s facility, whichever is earlier.” *Id.*

10 Mr. Perez Alvarado has now demonstrated that he has attempted to exhaust his  
11 administrative remedies by filing a request with the warden of the facility where he is being  
12 housed. (Defendant’s Motion, Exh. G.) More than 30 days have elapsed since that request  
13 was made, without response from the warden. Therefore, Defendant has met the  
14 requirement that he exhaust his administrative remedies.

15 If the exhaustion requirement is met, a court may modify or reduce the defendant’s  
16 term of imprisonment “after considering the factors set forth in [18 U.S.C. § 3553(a)]” if  
17 the Court finds, as relevant here, that “extraordinary and compelling reasons warrant such  
18 a reduction” and “such a reduction is consistent with applicable policy statements issued  
19 by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A)(i). As the movant, the  
20 defendant bears the burden to establish that he or she is eligible for a sentence reduction.  
21 *United States v. Holden*, \_\_F. Supp. 3d\_\_, 2020 WL 1673440, at \*3 (D. Or. 2020).

22 The Sentencing Guidelines list, as an example of an “extraordinary and compelling”  
23 reason, “[t]he defendant is suffering from a terminal illness . . . . Examples include  
24 metastatic solid-tumor cancer . . . .” U.S. Sentencing Guidelines Manual § 1B1.13 cmt. n.  
25 1(A)(i). Additionally, an extraordinary and compelling reason can exist if “[t]he defendant  
26 is . . . suffering from a serious physical or medical condition . . . that substantially  
27 diminishes [his] ability to provide self-care within the environment of a correctional facility  
28 and from which he . . . is not expected to recover.” *Id.* § 1B1.13 cmt. n. 1(A)(ii).

1       The Government does not dispute that Mr. Perez Alvarado has demonstrated an  
2 “extraordinary and compelling” reason for his request for compassionate release. He is  
3 suffering from a terminal illness and is undergoing chemotherapy. Additionally, the  
4 chemotherapy treatments he is receiving render him immunocompromised. According to  
5 the Centers for Disease Control, this factor, along with his type-2 diabetes and  
6 hypertension, place him at greater risk were he to contract COVID-19. *See* CDC, People  
7 with Certain Medical Conditions, [https://www.cdc.gov/coronavirus/2019-ncov/need-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html)  
8 [extra-precautions/people-with-medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html) (Aug. 14, 2020) (providing that  
9 people with cancer and type-2 diabetes are at increased risk of severe illness from COVID-  
10 19, and people with hypertension might be at an increased risk for severe illness from  
11 COVID-19). Finally, Defendant’s current level of care, including his chemotherapy  
12 treatments, his chronic care including change of an ostomy bag, renders him unable to  
13 provide self-care within the confines of a correctional institution. This determination also  
14 supports that his circumstances present “extraordinary and compelling” reasons for release.

15       Nonetheless, the Government argues that the § 3553(a) factors and the fact that  
16 Defendant still poses a significant danger to the safety of the community militates against  
17 granting the Motion. (Government’s Response.) The Court agrees Defendant has a lengthy  
18 and serious criminal record. Most of this involves drug trafficking, and there is at least one  
19 serious violent offense (Assault with a Deadly Weapon in 2001 (PSR ¶ 43)). The  
20 negotiated settlement of ninety-two months was a favorable one for Mr. Perez Alvarado,  
21 and he could realistically have received a much higher sentence.

22       Nonetheless, given his medical condition, the chance of recidivism at this point of  
23 his life is unlikely. To the extent the Government suggests that a lack of medical treatment  
24 in Mexico could lead Mr. Perez Alvarado to come back illegally to the United States after  
25 deportation, his medical condition certainly renders that possibility much more difficult  
26 and unlikely than it was before he was undergoing chemotherapy and had a colostomy.  
27 The likelihood of Mr. Perez Alvarado posing a significant danger to the community is also  
28 greatly reduced because of his medical condition. Certainly, if he were to commit an

1 offense again in the future, he knows that he is likely to die in prison. Therefore, the Court  
2 concludes that Mr. Perez Alvarado no longer poses a serious risk of danger to the safety of  
3 the community.


### 4 **III. CONCLUSION**

5 Mr. Perez Alvarado suffers from terminal cancer and may well not make it to the  
6 end of his current prison term, his current medical conditions make it impossible for him  
7 to provide self-care within the environment of a correctional facility, and he will not  
8 recover from this condition. Consequently, the Court finds Mr. Perez Alvarado has  
9 demonstrated “extraordinary and compelling” reasons for his compassionate release  
10 request. Considering all the factors under § 3553(a), the Court concludes his Motion  
11 should be **GRANTED**. (ECF No. 45 in No. 16-cr-02770-BAS; ECF No. 51 in No. 16-cr-  
12 940-BAS; ECF No. 25 in No. 17-cr-7017-BAS).

13 Finally, this order is stayed for up to fourteen days, for the verification of  
14 Defendant’s future residence in Mexico and/or establishment of a release plan, to make  
15 appropriate travel arrangements, and to ensure Defendant’s safe release. Defendant shall  
16 be released as soon as a plan for his travel to the west coast and deportation to Mexico is  
17 established, appropriate travel arrangements are made, and it is safe for Defendant to travel.  
18 There shall be no delay in ensuring travel arrangements are made. If more than fourteen  
19 days are needed to make appropriate travel arrangements and ensure Defendant’s safe  
20 release, the parties shall immediately notify the Court and show cause why the stay should  
21 be extended.

22 **IT IS SO ORDERED.**

23  
24 **DATED: August 31, 2020**

  
**Hon. Cynthia Bashant**  
**United States District Judge**